
**BZA-1830
CHRIS TABOR
Variances**

**STAFF REPORT
JULY 21, 2011**

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REQUEST MADE, PROPOSED USE, LOCATION:

Petitioner, with consent of owners, is requesting the following variances to rebuild a single-family home that was destroyed by fire:

1. To permit a front setback of 20' instead of the required 25' (UZO 4-2-2); and
2. To permit a rear setback of 16' instead of the required 25' (UZO 4-2-2)

The property, which is being offered for sale in conjunction with a vacant lot to the west, is located in the town of Stockwell where Cherry Street intersects with Howard at 6731 Cherry Street, Lauramie 05 (SE) 21-3.

AREA ZONING PATTERNS:

Zoning in the town of Stockwell located north of Attica Street is solidly R1 (Single Family Residential); a mix of R1, R3, R1B, GB and NBU can be found farther south into town. Directly across Cherry and Howard Streets, property is zoned AA (Select Agricultural).

AREA LAND USE PATTERNS:

The subject property is located at the western edge of the unincorporated town of Stockwell. Residential uses are found to the south and east; agricultural uses dominate to the north and west.

The block foundation of a home and a driveway are all that remain on the property after fire damage in late 2010. The property consists of ½ of an original platted lot in the town of Stockwell which was split in the mid seventies.

TRAFFIC AND TRANSPORTATION:

Cherry Street is classified as a local road and requires a 25' front setback. There are no traffic counts taken on this stretch of road, but only one other home to the east uses Cherry Street to access its driveway and garage.

ENVIRONMENTAL AND UTILITY CONSIDERATIONS:

The site is served by sanitary sewer.

STAFF COMMENTS:

The challenge facing this property is not only its small size, 5,070 sq. ft., but also the large platted right-of-way of Cherry Street. This property is part of Fowler's Addition to the original plat of Stockwell that envisioned a town much larger than what it is today; eight additional lots are platted across the street on what is now a farm field. Cherry Street was also platted to handle a larger volume of traffic generated by these lots.

While Cherry Street has a 60' right-of-way, it only has an actual pavement width of around 12.5'. Since building setbacks start at the right-of-way, not the edge of the pavement, there appears to be substantial area to meet the required front setback on this property but it is misleading because this ground is right-of-way. Staff and petitioner inquired with the County Highway Department about the possibility of vacating a portion of the right-of-way but were met with concern over partial vacation and vacating right-of-way on the curve where Howard meets Cherry Street.

However, with a 60' lot width and observing 25' rear and front setbacks, that leaves a building envelope only 10' wide. Petitioner is not proposing construction any closer to the front or rear setback than the original house, built in 1977 according to County Building Permit records. As far as staff can tell, there has been no record of complaint with regard to sight distances or encroachment on neighboring property.

This property consists of ½ of a lot platted in the late 1800s. A prior owner illegally split the property into two lots in the late seventies. However, with the adoption of the 1981 Unified Subdivision Ordinance, previous illegal splits were "forgiven." While there is no mechanism in the Ordinance to require replatting these lots into one, the best solution for the neighborhood is to re-establish these two lots into a single lot that more accurately reflects the nearby area. Petitioner (the potential buyer) has indicated that he would like to leave the option open to build a second home on the unimproved lot if purchased together.

Regarding the ballot items:

1. The Area Plan Commission on July 20, 2011 determined that the variances requested **ARE NOT** use variances.

And it is staff's opinion that:

2. Petitioner's plans do not indicate a structure that exceeds the setbacks (front or rear) of the home that was previously located on the site since 1977. There is no record of complaints regarding the previous structure, so granting both variances **WILL NOT** be injurious to the public health, safety, and general welfare of the community.
3. Use and value of the area adjacent to the property included in the request **WILL NOT** be affected in a substantially adverse manner. Petitioner is not exceeding the footprint of the previous structure which was over 50' from the nearest dwelling.
4. The terms of the zoning ordinance are being applied to a situation that **IS NOT** common to other properties in the same zoning district. Every other property in this plat must also observe 25' street frontage setbacks, but those lots are all well over 10,000 square feet.
5. Strict application of the terms of the zoning ordinance **WILL** result in an unusual or unnecessary hardship as defined in the zoning ordinance. After meeting the 25' rear and front setbacks, the building envelope only allows for a 10' wide structure and

does not provide a very practical solution for reuse of this property.

Note: Questions 5a. and 5b. need only be answered if a hardship is found in Question 5 above.

5a. The hardship involved **IS** self-imposed or solely based on a perceived reduction of or restriction on economic gain. Using the existing foundation on the property is the most economical and practical solution, but one that cannot be considered a hardship as defined by the ordinance. Replatting the two adjacent lots into one would eliminate the need for a variance and better reflect the other lots in the neighborhood.

5b. Because there are two lots that were not created by a legal subdivision, but rather by deed and replatting would eliminate the need for a variance. Thus, this request **DOES NOT** provide the minimum relief needed to alleviate the hardship.

STAFF RECOMMENDATION:

Variance Request #1 (Front setback): Denial

Variance Request #2 (Rear setback): Denial